

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WARREN BERES, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Nos. 03-785L, 04-1456L, 04-1457L, 04-
	)	1458L, 04-1459L, 04-1463L, 04-1465L,
THE UNITED STATES OF AMERICA,	)	04-1466L, 04-1467L, 04-1468L, 04-
	)	1469L, 04-1471L, 04-1472L, 04-1473L,
Defendant.	)	04-1474L
	)	
	)	Honorable Marian Blank Horn
	)	
	)	

DECLARATION OF HOWARD FREEDMAN

1. I am a Plaintiff in *Collins v. United States*, case no. 04-1472L, consolidated with *Beres v. United States*, case no. 03-785L. My wife, Pamela Freedman, and I owned a property in Lake Sammamish that is the subject of dispute in this partial summary judgment proceeding. We purchased the property from Barry Lewis on October 12, 1988 (see Def. Ex. 18) and sold the property in 2006 to Alan and Elizabeth Henkel. (See Orrico Declaration, Ex. \_\_.)

2. At the time of purchase, we believed that the railroad had an easement and that when it stopped using the easement the property would revert to us. This seemed to be the common understanding of our neighbors, too, since others in the area treated the right of way as their own, as did we.

3. No one, to my knowledge, claimed that we did not own the land under the railroad easement.

4. When Pam and I bought the property, the improvements and landscaping Mr. Lewis had done, as he describes in his Declaration, was evident to us. Pam and I continued in that same vein and, as to some parts of the right of way, expanded the landscaping already existing in the right of way. (See Exhibit A hereto, Areas A & E, which visually depicts the information provided in this Declaration,). We expanded the Area of planting with flowers and shrubs adjacent to the driveway east of the house. (id., Area A). We placed a terraced vegetable garden

surrounded by railroad ties in 1990 five feet from the railroad tracks and 10 feet wide extending westward 25 feet and installed a small fence around the garden in 1991 (*id.*, Area F). Around 1991 we installed an irrigation system to water the landscaping (*id.*, Area A and vegetable garden (Area F), and extended the irrigation pipes which we had installed on the northern part of the area of the right of way in 1992, southward extending 12' from the rail road tracks to the driveway access to the south (*id.*, Area C). We planted 12 cypress trees in 1992 along the right of way about 15' from the tracks on the west side (*id.*, Area C) to provide a sound barrier from the train and road noise and irrigated them to promote robust growth. We planted a cherry and another fruit trees on the right of way just north of the driveway at the southern end of the right of way in 1995 (*id.*, Area H). We planted a hedge on the right side of the driveway in the right of way (*id.*, Area H). We hired a Seattle landscape designer to design and complete a new garden with a water fountain feature around 1995. (*Id.*, Area A). The new garden had a walking trail, bench, flowers, bushes and flowering trees.

5. From 1988 till 2006 (when we sold the property) we stored a sailboat and trailer on the right of way in the flat area west of the railroad tracks above the steep slope further west (*id.*, Area B). From 1988 till 2006 we mowed the right of way in the level area to the west of the railroad tracks from the driveway northerly to our property line, except for a 5' segment on each side of the tracks which was mowed by the railroad (*id.*, Area C), and removed excessive brush, mostly blackberry bushes, and growth from the steep embankment to the west of the tracks (*id.*, Area G) and east of the tracks all the way up to the East Lake Sammamish Parkway (*id.* Area E). The slope east of the tracks (*id.*) was moderately sloping and had very dense brush, blackberry vines, and trees, and was less steep than the area west of the flat area, which started at a point approximately 15 feet west of the tracks (*id.*, Area G) that dropped down to the flower garden. We landscaped the driveway from the tracks down to the house with a wooden border (*id.* Area I) and installed a new mailbox on the right of way around 1999 next to East Lake Sammamish Parkway at the north side of the driveway. We also placed a large wood pile on the right of way just east of the tracks in 1994. (*Id.* Area D.) From 1988 till the mid 1990s we maintained the

septic drain field and septic pipes in the right of way (id. Area K) till the county placed water and sewer lines to the house through the right of way starting north of the driveway at E. Lake Sammamish Parkway which proceed west under the tracks and down the slopes under the landscaped garden and driveway to end at the house approximately 15 feet south of the northern garage where a new sewage tank and pump were installed. We mowed and cut the grass and weeds with a weed-eater in the area east and west of our driveway next to E. Lake Sammamish Parkway. (*Id.* Areas J and K.)

6. In short, from 1988 when we bought the property, until 2006 when we sold it, except for the tracks and 5' to each side of the railroad tracks, which were maintained and mowed by the railway, we regularly used, pruned, weeded, mowed, landscaped, cleared brush and maintained almost the entire right of way (which we considered our property) extending up to E Lake Sammamish Parkway.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge. This declaration was executed on this 30th day of January 2018.

A handwritten signature in cursive script, reading "Howard Freedman", written in black ink.

Howard Freedman, M.D.











